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Dicta Editorial Board

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OIL AND GAS PROBLEMS AND THE TORRENS SYSTEM

(Many of the recently discovered oil and gas fields in Colorado are located in the Northeastern part of the State, which is also the location of the 13th Judicial District. Furthermore, it is in this area of the State, that the Registration or Torrens System has been most extensively employed. Practitioners and oil men, not to mention Registrars of Title, have encountered a host of problems which, although not peculiar to oil and gas, were certainly highlighted in the wake of oil and gas discoveries. Many of the problems arise because of the inflexible nature of the statutory provisions dealing with the Registered Title—passed many years before the recent oil development.

On May 11, 1956, Judges Francis L. Shallenberger and Maxwell Snyder, Judges of the 13th Judicial District, called a conference of members of the 13th Judicial District Bar, other attorneys, oil and gas men, and interested County Officials at Sterling, Colorado, to discuss and confer on the oil and gas problems of the Registered Title and recommended uniform practices and procedures. The following report contains the highlights of the conference. Also found are the rules promulgated by the Judges as a result of the conference. It is believed that the material should prove of interest to the readers of Dicta.—Editor)

1. MINERAL INTERESTS FOR A PERIOD OF YEARS AND AS LONG THEREAFTER AS OIL AND GAS MAY BE PRODUCED FROM THE PREMISES:

It appeared to be the consensus of opinion that such interests could be most effectively handled by considering the same to be a reservation or conveyance of a determinable fee; that the Registrar should issue an Owner's Duplicate Certificate of Title to the party vested with such an interest; that the Certificate of Title should specifically note the date of expiration of the primary term and that during the primary term, conveyances would be registered and certificates issued as in the case of any other fee interest; that thereafter, conveyances should be registered and certificates issued only upon order of Court and after showing that the condition of the interest was still in force.

It will also be necessary to provide for application to the Court for cancellation of the original certificate and the issuance of another certificate to the holders of the reversionary interest upon failure of the condition set forth in the original conveyance — that is, production of oil and gas from the premises.

It was felt that this matter could be handled by Rule of Court but that legislative action should follow.

2. NOTICE AND PUBLICATION IN SUBSEQUENT PROCEEDINGS:

It was generally felt that publication in applications relating to lost Certificates of Title and joint tenancy was unnecessary and should not be required. In other subsequent proceedings where publication is necessary, either by Statute or order of Court, two publications, once each week, should be sufficient.

3. REPAIR OF MISTAKES:

It was felt that when the Registrar discovered a mistake, the matter should be called to the attention of the Examiner of Titles, and in cases where the mistake was attributable to the fault of the Registrar, the expense of the proceedings necessary to correct the same should be borne by the County.

4. ATTORNEY OF RECORD:

It was the consensus that in all matters requiring action by the District Court, there should be an attorney of record, and where an application is filed without the appearance of an attorney, the Court should appoint an attorney at the expense of the petitioner. This position seems to be supported by 118-10-72, C.R.S.

5. CONVEYANCES OF LESSEE'S INTEREST:

This problem clearly presented the most confounding issue discussed and there was no uniformity of opinion as to the proper solution. The procedure most favored by the Judges and supported by many present is as follows:

The original lease should appear as a memorial upon the Owner's Duplicate Certificate of Title; that thereafter, upon presentation to the Registrar of any transfer of the lessee's interest, the Registrar should require the presentation of a Lessee's Duplicate Certificate of Title and that all transfers of lessee's interest should appear as memorials on the Lessee's Duplicate Certificate of Title and the original Certificate of Title, and that it should not be necessary to require the production of the Owner's Duplicate Certificate of Title for the registration of such subsequent conveyances. Unquestionably, the adoption of such a Rule as outlined will present many problems and there is a definite need for legislation on this problem.

6. COMPLICATED DESCRIPTIONS OR MATHEMATICAL COMPUTATIONS:

It was generally agreed that the Registrars should have authority to refuse to register instruments involving unduly complicated descriptions of property or mathematical computations of mineral interests and require the person presenting such instruments for registration either to simplify the description or submit an accounting of the computation, as the case may require.

7. SUSPENSION FILE:

All were in agreement that the Registrars have no legal authority or obligation to hold for registration instruments presented without being accompanied by Owner's or Lessee's Duplicate Certificate of Title. As a matter of practice, it was suggested that the Registrar's who might desire to hold such instruments as an accommodation should notify such persons that the instrument is being held merely as a matter of accommodation pending receipt of an Owner's or Lessee's Duplicate Certificate of Title.

8. FEES:

It was apparent that there does not now exist any uniformity insofar as docket fees are concerned in supplemental matters. It was called to our attention that the fees provided by Statute for civil actions should apply in proceedings before the Court. These Statutes provide for a plaintiff's docket fee of \$10.00, and for a docket fee of \$5.00 on interpleading. It is the feeling of the Judges that the petitioner on supplemental proceedings can logically be

considered as interpleading in the original action, in which event the proper fee would be \$5.00.

So far as Registrars are concerned, it was felt that the provisions of 118-10-86, C.R.S., should be called to their attention. This section provides for the assessment of a fee for the Indemnity Fund on subsequent transfers of the property to heirs and devisees. It is doubted if this fee is now regularly being collected by all of the Registrars.

9. PLACE FOR RESERVATIONS AND EXCEPTIONS:

It was felt that reservations or exceptions or conditions in any conveyance should appear in or following the description of the property on the original and duplicate certificates, and that the Registrars should show there the document number of the instruments wherein the reservation or exception is set up.

10. CERTIFICATE OF PAID UP TAXES:

It was generally felt that no good purpose was served by requiring a Certificate of Paid Up Taxes more than once in any one year. This is a matter that will have to be taken care of by legislation.

RULES AND INSTRUCTIONS TO REGISTRARS

STATE OF COLORADO }
COUNTY OF LOGAN } ss.

RULES AND INSTRUCTIONS TO REGISTRARS OF TITLE AND CLERKS OF COURT OF THE THIRTEENTH JUDICIAL DISTRICT.

Pursuant to the terms and provisions of 118-10-9, C.R.S.—'53, IT IS HEREBY ORDERED AND DIRECTED by the Judges of the Thirteenth Judicial District of the State of Colorado, sitting en banc at Sterling, Colorado, that the following rules and instructions shall be applicable in the offices of the Registrars of Title and in the District Courts within the Thirteenth Judicial District, from and after this date and until the further order of the Court:

1. Upon presentation to the Registrar of Titles of an instrument conveying or reserving a mineral interest for a definite period of years and as long thereafter as oil and gas may be produced from the premises, the Registrar shall issue to the grantee of such an interest, or the person reserving such an interest, an Owner's Duplicate Certificate of Title, and such an interest shall be considered a fee interest. The original Certificate of Title and copies thereof shall specifically note thereon the date of expiration of the primary term. During the primary term, subsequent conveyances shall be registered and certificates issued as in the case of other fee interests. After such date, conveyances shall be registered and certificates issued only upon order of Court, and Certificates of Title shall be cancelled upon the failure of the condition in the conveyance only upon order of Court.

2. Upon discovery of a mistake in a Certificate of Title, the Registrar of Titles shall call the same to the attention of the Examiner of Titles, and in cases where the mistake shall be attributable to the fault of the Registrar, the expense of such proceeding as may